

## **BILL ANALYSIS**

Senate Research Center

S.B. 1639  
By: Staples  
Natural Resources  
7/2/2003  
Enrolled

### **DIGEST AND PURPOSE**

Currently, a water conservation district (district) may place certain restrictions on water wells. S.B. 1639 allows a district to take into consideration geographic differences throughout the area when determining well regulations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to a water conservation district (district) in SECTION 1 (Section 36.116, Water Code) and to the Study Commission on Water for Environmental Flows in SECTION 2 (Section 11.0236, Water Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 36.116, Water Code, by adding Subsection (d) and (e), as follows:

(d) Authorizes a groundwater conservation district, for better management of the groundwater resources located in a district or if a district determines that conditions in or use of an aquifer differ substantially from one geographic area of the district to another, to adopt different rules for certain entities, including each aquifer, subdivision or an aquifer, or geologic strata located in whole or in part within the boundaries of the district.

(e) Provides that in regulating the production of groundwater under Subsection (a)(2), a district:

- (1) is required to select a method that is appropriate based on the hydrogeological conditions of the aquifer or aquifers in the district; and
- (2) is authorized to limit the amount of water produced based on contiguous surface acreage.

SECTION 2. Amends Subchapter B, Chapter 11, Water Code, by adding Sections 11.0235, 11.0236, and 11.0237, as follows:

Sec. 11.0235. POLICY REGARDING WATERS OF THE STATE. (a) Provides that the waters of the state are held in trust for the public, and the right to use state water may be appropriated only as expressly authorized by law.

(b) Provides that maintaining the biological soundness of the state's rivers, lakes, bays, and estuaries is of great importance to the public's economic health and general well-being.

(c) Provides that the legislature has expressly required the Texas Commission on Environmental Quality (TCEQ) while balancing all other interests to consider and provide for the freshwater inflows necessary to maintain the viability of the state's bay and estuary systems in TCEQ's regular granting of permits for the use of state waters.

(d) Provides that the legislature has not expressly authorized granting water rights exclusively for:

- (1) instream flows dedicated to environmental needs or inflows to the state's bay and estuary systems; or
- (2) other similar beneficial uses.

(e) Provides that the fact that greater pressures and demands are being placed on the water resources of the state makes it of paramount importance to reexamine the process for ensuring that these important priorities are effectively addressed in clear delegations of authority to the commission.

Sec. 11.0236. STUDY COMMISSION ON WATER FOR ENVIRONMENTAL FLOWS.

(a) Provides that in recognition of the importance that the ecological soundness of our riverine, bay, and estuary systems and riparian lands has on the economy, health, and well-being of the state there is created the Study Commission on Water for Environmental Flows.

(b) Provides that the study commission is composed of 15 members as follows:

- (1) two members appointed by the governor;
- (2) five members appointed by the lieutenant governor;
- (3) five members appointed by the speaker of the house of representatives;
- (4) the presiding officer of TCEQ or the presiding officer's designee;
- (5) the chairman of the board or the chairman's designee; and
- (6) the presiding officer of the Parks and Wildlife Commission or the presiding officer's designee.

(c) Provides that of the members appointed under Subsection (b)(2):

- (1) one member must represent a river authority or municipal water supply agency or authority;
- (2) one member must represent an entity that is distinguished by its efforts in resource protection; and
- (3) three members must be members of the senate.

(d) Provides that of the members appointed under Subsection (b)(3):

- (1) one member must represent a river authority or municipal water supply agency or authority;
- (2) one member must represent an entity that is distinguished by its efforts in resource protection; and
- (3) three members must be members of the house of representatives.

(e) Provides that each appointed member of the study commission serves at the will of the person who appointed the member.

(f) Provides that the appointed senator with the most seniority and the appointed house member with the most seniority serve together as co-presiding officers of the study commission.

(g) Provides that a member of the study commission is not entitled to receive compensation for service on the study commission but is entitled to reimbursement of the travel expenses incurred by the member while conducting the business of the study commission, as provided by the General Appropriations Act.

(h) Authorizes the study commission to accept gifts and grants from any source to be used to carry out a function of the study commission.

(i) Requires TCEQ to provide staff support for the study commission.

(j) Requires the study commission to conduct public hearings and study public policy implications for balancing the demands on the water resources of the state resulting from a growing population with the requirements of the riverine, bay, and estuary systems including granting permits for instream flows dedicated to environmental needs or bay and estuary inflows, use of the Texas Water Trust, and any other issues that the study commission determines have importance and relevance to the protection of environmental flows. Requires the study commission to take notice of the strong public policy imperative that exists in this state recognizing that environmental flows are important to the biological health of our parks, game preserves, and bay and estuary systems and are high priorities in the permitting process, in evaluating the options for providing adequate environmental flows. Requires the study commission to specifically address ways that the ecological soundness of these systems will be ensured in the water

allocation process.

(k) Provides that the study commission:

- (1) is required to appoint an advisory scientific committee that will:
  - (A) serve as impartial scientific advisors and reviewers for the study commission; and
  - (B) have a membership of no fewer than five and no more than nine total members chosen by the study commission to represent a variety of areas of relevant technical expertise;
- (2) is authorized to appoint additional advisory committees to assist the study commission; and
- (3) is authorized to draft proposed legislation to modify existing water rights permitting statutes.

(l) Requires the study commission to issue a report containing certain information, not later than December 1, 2004.

(m) Requires the study commission to promptly deliver copies of the report to the governor, lieutenant governor, and speaker of the house of representatives.

(n) Requires the study commission to adopt rules to administer this section.

(o) Provides that the study commission is abolished and this section expires September 1, 2005.

**Sec. 11.0237. WATER RIGHTS FOR INSTREAM FLOWS DEDICATED TO ENVIRONMENTAL NEEDS OR BAY AND ESTUARY INFLOWS.** (a) Prohibits TCEQ from issuing a new permit for instream flows dedicated to environmental needs or bay and estuary inflows. Provides that this section does not prohibit TCEQ from issuing an amendment to an existing permit or certificate of adjudication to change the use to or add a use for instream flows dedicated to environmental needs or bay and estuary inflows.

(b) Provides that this section does not alter the commission's obligations under Section 11.042(b), 11.046(b), 11.085(k)(2)(F), 11.134(b)(3)(D), 11.147, 11.1491, 16.058, or 16.059.

(c) Provides that this section expires September 1, 2005.

**SECTION 3.** Amends Sections 11.147(d) and (e), Water Code, as follows:

(d) Requires TCEQ to include in the permit, to the extent practicable when considering all public interests, those conditions considered by TCEQ necessary to maintain existing instream uses and water quality of the stream or river to which the application applies, In its consideration of an application to store, take, or divert water.

(e) Requires TCEQ to include in the permit, to the extent practicable when considering all public interests, those conditions considered by TCEQ necessary to maintain fish and wildlife habitats.

SECTION 4. Effective date: upon passage or September 1, 2003.